

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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HUMBERTO FIERRO-RASCON,

Petitioner,

v.

UNITED STATES of AMERICA,

Respondent.

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ORDER

14-cr-13-jdp

16-cv-24-jdp

Petitioner Humberto Fierro-Rascon filed a motion to vacate his conviction and sentence under 28 U.S.C. § 2255. Dkt. 1. I reviewed the petition and concluded that two of his four claims were barred, and the other two were procedurally defaulted, but I gave Fierro-Rascon the opportunity to try and overcome the defaults. Fierro-Rascon responded, contending that his counsel was ineffective and caused him to default on the claims. But he failed to explain how his appellate counsel's alleged error prejudiced him, so he failed to overcome his default. As a result, I dismissed his petition. Dkt. 5. Fierro-Rascon moved for reconsideration of my ruling. I denied his motion. Dkt. 9. He then moved for relief from judgment under Federal Rule of Civil Procedure 60(b)(1). I denied that motion, too. Dkt. 12.

Now, Fierro-Rascon moves for appointment of counsel under 18 U.S.C. § 3006A(a)(2)(B) so that he may "move forward with his two claims." Dkt. 13, at 2. That statutory section allows appointment of counsel for a financially eligible person seeking relief under § 2255 when "the interests of justice so require." Fierro-Rascon's case has been closed for over a year. I have considered his arguments in his original petition, his motion for reconsideration, and his Rule 60(b) motion. None of them had merit. There is no reason to appoint counsel to represent Fierro-Rascon in his § 2255 petition because that petition has

already been denied. So I will deny Fierro-Rascon's motion for appointment of counsel. I will also deny his application to proceed without prepayment of fees as moot. Dkt. 14.

ORDER

IT IS ORDERED that:

1. Petitioner Humberto Fierro-Rascon's motion for appointment of counsel, Dkt. 13, is DENIED.
2. Petitioner's application to proceed without prepayment of fees, Dkt. 14, is DENIED as moot.

Entered November 7, 2017.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge